

## STATE OF MONTANA

[illegible]

Respondent.

### DECISION AND ORDER

The June 10, 1998, Order of the Musselshell County Superintendent is  
AFFIRMED.

## STANDARD OF REVIEW

The State Superintendent's review of a county superintendent's decision is based on the standard of review of administrative decisions established by the Montana Legislature in § 2-4-704, MCA, and adopted by this Superintendent in ARM 10.6.125. Findings of fact are reviewed under a clearly erroneous standard and conclusions of law are reviewed to determine if the correct standard of law was applied. See, for example, Harris v. Trustees, Cascade County School Districts No. 6 and F. and Nancy Keenan, 241 Mont. 274, 786 P.2d 1164 (1990) and Steer, Inc. v. Dept. of Revenue, 245 Mont. 470, at 474, 803 P.2d at 603 (1990).

Granting a motion to dismiss based on lack of jurisdiction is a conclusion of law. On review, this Superintendent uses the standard that motions to dismiss are viewed with disfavor and are considered from the perspective most favorable to the opposing party. Buttrell v. McBride Land and Livestock, 170 Mont. 296, 553 P.2d 407 (1976). Bland v. Libby School District No. 4, OSPI 205-92, 12 Ed.Law 76 (June, 1993)

## MEMORANDUM OPINION

This Superintendent agrees with the County Superintendent's dismissal of the appeal as untimely. A county superintendent's jurisdiction to review a school board's decision is derived from § 20-3-210, MCA. This Superintendent questions whether the intent of that section is to require county superintendent review of school board decisions such as a one week suspension from cheerleading. That question does not need to be answered in this case, however, because the appeal to the County Superintendent was not timely.

ARM 10.6.103 states:

(1) A person who has been aggrieved by a final decision of the board of trustees of a school district in a contested case is entitled to commence an appeal before the county superintendent.

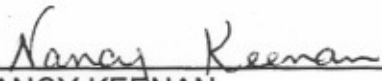
(2) A school controversy contested case shall be commenced by filing a notice of appeal with the county superintendent and the parties within 30 days after the final decision of the governing authority of the school district is made. Notice of appeal shall be served by certified mail. Respondent shall file a written reply to the notice of appeal within 10 days of receipt.

(3) A party to a controversy may make and file with the county superintendent an affidavit disqualifying the county superintendent pursuant to section 20-3-211, MCA. The affidavit must be filed not less than 10 days before the original date set for the hearing.

The Board heard and decided this matter at an April 16, 1998, meeting and issued a written Order on April 29, 1998. Whether the [REDACTED] had until May 18, 1998 (30 days from April 16th), or May 29, 1998 (30 days from April 29, 1998) does not have to be decided in this case because an appeal was not filed until June 1, 1998.

The Order of the County Superintendent is affirmed.

DATED this 2 day of October, 1998.

  
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NANCY KEENAN

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## CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on this 2<sup>nd</sup> day of October, 1998, a true and exact copy of the foregoing DECISION AND ORDER was mailed, postage prepaid, to the following:

Matthew J. Sisler, Esq.  
P.O. Box 1644  
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Board of Trustees, District 55H  
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